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FEDERAL COMMUNICATIONS COMMISSION
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Ameritech Corp., Transferor,) CC Docket No. 98-141
And SBC Communications, Transferee, For)
Consent to Transfer Control of Corporations) ASD File No. 99-49
Holding Commission Licenses and Lines)

COMMENTS OF ALLEGIANCE TELECOM, INC.

Allegiance Telecom, Inc. ("Allegiance") submits these comments in support of the petition for reconsideration filed by the Competitive Telecommunications Association ("Comptel") of the *Project Pronto Order*.¹

I. The Broadband Services Offering Should Be Offered As An Unbundled Network Element

Allegiance supports CompTel's request that the Commission clarify that SBC's Broadband Services Offering is an unbundled network element or voluntary-combined unbundled network elements. ILECs and CLECs alike seem to agree on the importance of a Broadband Service Offering in regard to next generation digital loop carrier ("NGDLC") facilities. As Verizon notes in its comments in this Commission's response to the Commission's notices of proposed rulemaking² in the proceeding addressing the need for revision of the

¹ Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, CC Docket No. 98-141, *Second Memorandum Opinion and Order*, rel. Sept. 8, 2000 ("Project Pronto Order").

² In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147, 96-98, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 00-297 (August 10, 2000)("Collocation Reconsideration Order and NPRM").

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Commission's local competition rules in light of deployment of next generation network architecture by incumbent local exchange carriers ("ILECs"):

[a] far more efficient way of serving multiple carriers that does not involve the legal and policy considerations discussed above would be for incumbents to offer a wholesale service, using their own DSLAMs and line cards. Competitors can use this wholesale offering to provide advanced services to the public. This was analogous to the approach SBC proposed and which the Commission recently approved.³

SBC obviously should be viewed as concurring since it crafted such an offering. The problem, however, is in the characterization of such an offering as a voluntary wholesale service. This service offering should not be characterized as "voluntary" and it is not merely a wholesale service. In fact, the Broadband Service Offering is a manifestation of what ILECs are required to offer in regard to DLC-fed loops. The Commission was prescient in determining in its *Local Competition Order*:

[w]e further conclude that incumbent LECs must provide competitors with access to unbundled loops regardless of whether the incumbent LEC uses integrated digital loop carrier technology, or similar remote concentration devices, for the particular loop sought by the competitor. IDLC [Integrated Digital Line Carrier] technology allows a carrier to aggregate and multiplex traffic directly into the switch without first demultiplexing the individual loops. If we do not require incumbent LECs to unbundle IDLC-delivered loops, end users served by such technologies would not have the same choice of competing providers as end users served by other loop types. Further, such an exception would encourage incumbent LECs to "hide" loops from competitors through use of IDLC technology.⁴

At the time, the Commission was referencing IDLC technology which in the intervening years has evolved into the next generation DLC technology. The Commission in its *UNE Remand*

³ CC Docket Nos. 98-147 and 96-98, Comments of Verizon at p. 11 (October 12, 2000) ("Verizon Comments").

⁴ In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, First Report and Order, 11 FCC Rcd. at 15499 at ¶ 383 (1996) ("UNE Remand Order").

Order restated its finding as to unbundling IDLC loops, but noted at the time that CLECs were not yet able “economically to separate and access IDLC customers’ traffic on the wire-center side of the IDLC multiplexing devices.”⁵ The NGDLC technology, however, has made such access technically and economically feasible. In fact, SBC would not be able to offer the Broadband Service Offering if CLECs were not able to access voice and data traffic on the wire-center side of the DLC devices. The Commission has not retreated from its holding that the DLC-served loops should be unbundled, and the same rationale for unbundling described above still applies regardless of the technological developments.⁶ There, the Commission clearly contemplated that the DLC technology constituted part of the unbundled loop, and that failing to require unbundled access to such loops would limit the choice of providers for end users served by the technology.⁷ The Broadband Service Offering is the tangible manifestation of what this unbundled NGDLC loop offering should look like. In that offering, SBC offers access to a:

combined network arrangement consisting of: copper facilities from the NGDLC device deployed in remote terminal sites (includes CEVs, huts, and cabinets) to the end user location; a permanent virtual circuit that consists of ATM data transported over a common OC-3c fiber facility from the NGDLC in the remote terminal terminating on the central fiber distribution frame and delivered to a leased affiliated or unaffiliated telecommunications carrier port on the SBC/Ameritech incumbent LEC’s OCD in the serving wire center; and a port on the SBC incumbent LEC’s OCD with associated cross-connects to extend the port

⁵ *In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, at ¶ 217, fn. 418 (1996)(“*Local Competition Order*”)

⁶ NGDLCs is simply IDLC technology that conforms to Telcordia’s GR-303 specifications. These systems reduce operating and capital equipment costs while delivering a full range of telecommunications services. The NGDLC is an Integrated Access System that supports multiple distribution technologies and architectures (e.g., xDSL, Fiber-to-the-Curb) and a wide range of services (narrowband and broadband) on a single access platform. <<<http://www.telcordia.com/resources/genericreq/gr303/index.html>>>

⁷ Market forecasts project that over half the U.S. telephone subscribers will be served by remote terminals within the next three years. CC Docket Nos. 98-147 and 96-98, Comments of Catena at p. 3 (October 12, 2000)(“*Catena Comments*”).

to a point of affiliated or unaffiliated telecommunication carrier virtual or physical collocation.⁸

There is no dispute as to whether CLEC access to NGDLC loops via such offerings as the Broadband Service Offering should be provided, and there should be no question whether it should be provided on an unbundled basis pursuant to Section 251(c). We have already demonstrated that this Commission has required DLC loops to be provided on an unbundled basis. In fact, SBC seemed to be of the same opinion, at least initially. In its original iterations of its Broadband Service Offering, SBC was planning to offer it as an unbundled network element, but a few months later performed an about-face and decided to offer it as a “wholesale” offering.⁹ This reversal demonstrates the need for this Commission to clarify SBC’s obligations in regard to the product offering.

CLECs should not be made to rely on “voluntary” product offerings for access to NGDLC loops when said loops should, under existing rules, already be provided on an unbundled basis, and when these “voluntary” offerings can be modified or withdrawn at any time.

The importance of this Commission reaffirming the need for ILECs to provide access to DLC loops on an unbundled basis, and the uncertainty caused by reliance on “voluntary” product offerings, is seen by the differences between revised contract language for the Broadband Service Offering proffered by SBC¹⁰ and representations made by SBC before this Commission

⁸ Id.

⁹ *In the Matter of Application of Ameritech Michigan for approval of cost studies and resolution of disputed issues related to certain UNE offerings*, Michigan Public Service Commission Case No. U-12540, Cross-Examination Testimony of John P. Lube of Ameritech Michigan at pp. 589-592 (MI PSC Oct. 24, 2000).

¹⁰ *SBC Broadband Service – Interim Contract Language and Product Availability (Business Processes) – Arkansas, Kansas, Missouri, Oklahoma and Texas*, September 6, 2000 SBC Accessible Letter. (“SBC September 6th Letter”).

in its proceeding evaluating SBC's ownership of equipment in its NGDLC deployment. For instance, SBC stated it would not be offering the Broadband Service "in the context of an Interconnection Agreement negotiated under Sections 251/252(c)(2),"¹¹ but rather as a stand-alone Service agreement. Thus, CLECs will be impeded in arbitrating details as to the offering before state commissions. This Commission, however, contemplated that the offering would be pursuant to a proposed amendment to an interconnection agreement.¹² The Commission was under the expectation that state proceedings relating to the proposed amendment would resolve particular issues in regard to the product offering. It is better, however, for the Commission to clarify this issue at a national level rather than require CLECs to litigate the issue in thirteen different states which will be very costly and create the potential for widely-disparate obligations on the part of SBC in regard to the offering.

Second, the September 6th letter offering states the Broadband Service Offering only supports UBR Quality of Service ("QoS"), while this Commission was under the expectation that SBC would offer CBR QoS.¹³ The September 6th letter also reserved to SBC the sole right to determine practical or technical feasibility of a particular feature or functionality of equipment, while the Commission established a presumption that "all features, functions, and capabilities made available by the manufacturer are technically and operationally feasible" unless SBC can demonstrate that it is not.¹⁴ Thus, the SBC commitments are quickly being diluted in the

¹¹ SBC September 6th Letter at p. 1.

¹² *In the Matter of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket No. 98-141, ASD File No. 99-49, Second Memorandum Opinion and Order, FCC 00-336, at ¶ 30 (Sept. 8, 2000) ("Project Pronto Order").

¹³ SBC Proposed Interim Agreement at p. 14; *Project Pronto Order* at ¶ 45.

¹⁴ SBC Proposed Interim Agreement at p. 16; *Project Pronto Order* at ¶ 44.

tangible manifestations of its product offering. For these reasons, the Commission must be explicit about ILEC obligations in regard to the Broadband Service Offering. Voluntary offerings are sources of little comfort to CLECs. The Broadband Service Offering needs to be required as an unbundled network element or a combination of unbundled network elements pursuant to Section 251 of the Act. Such an approach would be consistent with the prior determinations of this Commission and eliminate much uncertainty and potential litigation in regard CLEC enforcement of these obligations.

II. A Transition Period Is Needed

SBC's iteration of the Broadband Service Offering in its September 6th letter clearly demonstrates that a transition period is needed in regard to implementation of the offering, and other product offerings made pursuant to the *Project Pronto Order*. While the letter was issued two days before the *Project Pronto Order*, the letter clearly demonstrates that SBC and the Commission are not on the same page in regard to the nature of SBC's commitments. CLECs will have to spend much time just getting SBC's product offerings to conform to what was required in the *Project Pronto Order*. This is in addition to the disadvantages that CompTel noted that CLECs will face while they wait for SBC to develop pre-order, order, and provisioning processes and systems for CLECs to access the new Project Pronto architecture/network configuration.¹⁵

Meanwhile, SBC's advanced service affiliate will be able to commence providing advanced services via the Project Pronto network. By SBC's own pronouncements it is zooming ahead in its xDSL deployment. . SBC has recently reported 516,000 DSL customers at the end

¹⁵ CC Docket 98-141, Petition for Reconsideration of Competitive Telecommunications Association at p. 10 (October 10, 2000).

of the third quarter, and stated that it is adding 4,000 new customers a day.¹⁶ The Commission needs to ensure that CLECs have proper access to the Project Pronto architecture before allowing SBC's affiliate to race ahead with its provisioning of service. Right now the CLEC access to the product offerings is not meaningful because CLECs do not have access to what the Commission mandated. For instance, under the September 6th letter, CLECs do not have access to CBR QoS, nor are they able to utilize that all presumption that "all features, functions, and capabilities made available by the manufacturer are technically and operationally feasible" unless SBC can demonstrate that it is not feasible. These issues will not impede SBC's affiliate's deployment of service because the architecture supports exactly the types of services SBC wants to deploy. CompTel was correct in noting that without a transition period, CLECs will be disadvantaged, and the Commission needs to implement such a period.

III. SBC Clearly Violated the Merger Conditions Under which the Incumbents Could Perform Network Planning for the Advanced Services Affiliate

As the Commission noted in the *Project Pronto Order*, the merger condition that allows SBC's incumbent LECs to perform some network planning and engineering services on behalf of their Advanced Services Affiliate is limited both by time and by the purpose for which it may be performed. The network planning that may be undertaken must have been performed prior to April 5, 2000, and it must have been performed for the purpose of allowing "an efficient transfer of existing advanced services customers. If either of those two conditions are not complied with the network planning would be in violation of the merger conditions.

In the *Project Pronto Order*, the Commission dismissed the argument that Project Pronto constitutes a *per se* violation of the network planning and engineering provisions of the merger conditions because SBC had provided evidence that it had decided to use plug-in cards installed

¹⁶ *Communications Daily*, Telephony at p. 7 (October 24, 2000).

in remote terminals to provide DSL service in early 1999, prior to the adoption of the Merger Conditions and that there was no evidence to show that SBC's incumbent LECs improperly provided network planning services with regard to the deployment of plug-in cards as part of Project Pronto after the transition period, which ended on April 5, 2000. But the issue raised by Comptel is not limited to the decision to deploy plug-in cards as part of Project Pronto nor to activities *after* the transition period.

As noted above, the incumbents were restricted in what they could do in the way of network planning during the transition period. It is during that transition period that the SBC incumbents violated the limitations that applied to their ability to provide network planning for the Advanced Services affiliate. The transition period was from the adoption of the Merger Conditions in early October of 1999 until April 5, 2000. The SBC application for modification of the conditions in light of Project Pronto was submitted to the Commission on February 15, 2000. While Allegiance does not have specific information on the dates at which various network planning and engineering actions were taken it defies credulity to believe that no such actions were taken during the period between October of 1999 and February of 2000. Certainly, if all the major network planning and engineering decisions had been made by October 1999, one would expect that SBC would have submitted its request prior to February (or would not have accepted the merger conditions to begin with). In any event, the Commission should not have so summarily dismissed the concerns raised by Comptel.

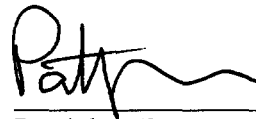
Project Pronto is a radical redesign of the incumbent network and is clearly designed to enable those customers who could not previously gain access to SBC's advanced services to obtain such services. As such, any network planning and engineering undertaken for Project Pronto is necessarily not for the purpose of minimizing any disruption of the efficient and timely

delivery of Advanced Service to customers . . . to permit the orderly transition to the steady-state provisioning of Advanced Services.”¹⁷ Therefore, the Commission should have found that SBC had violated the merger conditions relating to network planning and engineering conditions.

IV. CONCLUSION

For these reasons, the Commission should grant the Comptel petition for reconsideration.

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¹⁷ Merger Conditions, Para. 4.

CERTIFICATE OF SERVICE

I, Candise M. Pharr do hereby certify that on this 3rd day of November, 2000 the foregoing were delivered by hand to the following:

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